

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 772 OF 2004

Shri Ambady Krishna Menonip aged 57, Proprietor Ambady Pictures Release, Old Thevara Road, Kochi -16. Ernakulum now at Ambady's Panthiyil Warlam Road, Cochin - 682 016.	]]]]]]	..Petitioner (Ori. accused)
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Versus

1. Shri Vazapully Snaku Gangadharan Proprietor, M/s. Usha Priya Movie Makers, Bombay - 6, Narmada Narayan Guru Co-op. Housing Society, P.I. Lokhande Marg, Chembur, Mumbai-76.]	]]]]]	
2. The State of Maharashtra, (through the office of Public Prosecutor, High Court.)	]]]	.. Respondents

Ms. Harjeet Kaur for the Petitioner.

Mr. M. Janardhan for respondent No.1.

Mr. A.S. Shitole, A.P.P. for respondent No.2.

CORAM: ANOOP V. MOHTA, J.

DATED: 23RD NOVEMBER, 2004.

ORAL JUDGMENT:

1. The Petitioner has invoked the provisions of Section 482 of the Criminal Procedure Code (for short "Cr.P.C.") read with Article 227 of the Constitution of India and prayed to quash and set aside the order of the

Sessions Judge in Revision Application No. 309 of 2003, dated 10th February, 2004, whereby, the order dated 31st March, 2003, passed by the Metropolitan Magistrate, Vikhroli, Mumbai, was set aside and the criminal proceedings initiated by the original complainant has been restored and the complainant/accused has been directed to attend the Trial Court on the given date. Therefore, this Petition by the original accused.

2. The accused had filed an application under Section 177 read with Section 181(4) of the Cr.P.C. dated 28th August, 2001, in Criminal Complaint No. 415/S of 1989 filed by the complainant and prayed to decide the issue about the jurisdiction to try and entertain the complaint in question and had also prayed for discharge. The original complainant, by his reply dated 25th September, 2001, resisted the same. The learned Metropolitan Magistrate, by order dated 31st March, 2003, held that the Metropolitan Magistrate has no jurisdiction to entertain the present complaint. The complainant, therefore, had preferred Criminal Revision Application No. 309 of 2003 against the said order. The Additional Sessions Judge, Greater Bombay, by his order dated 10th February, 2004, allowed the said Revision Application and the complaint in question has been restored to its file.

3. In the present Petition, the learned Advocate Ms. Harjeet Kaur has appeared on behalf of the petitioner and contended that the Metropolitan Magistrate has no jurisdiction to try and entertain such complaint in question as the basic agreement between the parties, stipulates clearly that the Courts at Ernakulum, Kerala, shall have jurisdiction to try any dispute arising out of the agreement. The respondent No.1 (original complainant) has nowhere mentioned that agreement took place at Mumbai. The only averment made in the complaint is that the initial talks took place at Mumbai and the accounts were required to be rendered in Mumbai, but that by itself, is not sufficient to entertain such complaint at Mumbai.

. A Civil Suit No. 157 of 1998, filed by the petitioner (original accused) is pending at Kerala. It is the positive case of the petitioner (original accused) in the Plaint filed in the Kerala Court that respondent No.1 (original complainant) had approached the petitioner at the office at Ernakulam, for the deal and the same was admitted by the original complainant in the Written Statement filed in the same Suit. In view of this, she has supported the order passed by the Metropolitan Magistrate. She has also relied on **1991, Cri.L.J., 418 (Delhi)**, [Jai Parkash Vs. Dinesh Dayal] in support of her submissions.

4. The learned Advocate Mr. M. Janardhan for the respondent No.1 has resisted the above contention raised by the petitioner and supported the impugned order passed by the learned Sessions Judge. He has relied on various authorities in support of his contention.

5. The issue regarding the jurisdiction to entertain the complaint under Section 420 and/or in the alternative under Section 406, 409 of the Indian Penal Code (for short "IPC"), especially when it arises out a commercial transaction between the parties, always is a matter of debate. In the present case, the complaint dated 28th July, 1999, which has been restored by the impugned judgment, reflects that the respondent/ complainant is a proprietor of M/s. Usha Priya Movie Makers, having its Main Administrative Office at Gala No.28/29, Ganga Industrial Estate, P.A. Lokhandwala Marg, Chembur, Mumbai. In January, 1996, the complainant had advertised and gave wide publicity to his new feature film known as "Kulam" in Malayalam language. The petitioner (original accused), based on this advertisement and wide publicity, had expressed his desire for distributorship of the said film in the State of Kerala and, based on that, telephonic talks were going on since November, 1996. Based on the telephonic talks, the petitioner (original accused) came to Mumbai, at the residence of the complainant i.e. flat

Nos.5 & 6, Narmada Narayan Guru Cooperative Society, Lokhandwala Marg, Chembur, Mumbai. The initial discussion regarding the distributorship and the release of the film in the State of Kerala took place. The agreement was executed in December 1996, whereby, the petitioner (original accused) had been given the distributorship and rights to release the film only for the State of Kerala and the rest of the rights remained with the complainant. The complainant had spent about Rs.75 lakhs for the production of the said film, based on the representation made by the petitioner (original accused) at his Office in Chembur, Mumbai. It was specifically agreed between the parties to render accounts and daily statements of the tickets sold and the collection of the same, including the monthly Statement of Accounts, at Bombay, but the petitioner (original accused) failed to do the same. The complainant had, therefore, no choice, but to sent various reminders and letters.

6. The second agreement took place between the parties on 9th February, 1997, before release of the film. As the petitioner failed to render proper accounts and to remit the proper share, the respondent/complainant therefore, has initiated the proceedings in question. This complaint is also reflects various other incidents of cheating and such related allegations against the

petitioner (original accused) including the averments of the criminal breach of trust in respect of the amount of Rs.1,25,00,000/-.

7. This background, according to the respondent/complainant, itself is sufficient to entertain the present complaint at Mumbai and, therefore, the Metropolitan Magistrate, Vikhroli, Mumbai, has jurisdiction to entertain such complaint.

8. The relevant paragraph 22 of the Complaint is reproduced as under:

"22. I say that this Court has jurisdiction to entertain and try out my complaint against the accused as the initial talks regarding the release and distributorship had taken place at my office at Chembur, Mumbai - 400 089 and so also the accused was to render accounts at my said office and to remit the amount to me at my office address."

9. There is no dispute that the agreement (Exhibit-1) dated 18th December, 1996, in question, between the parties, was executed at Ernakulam at Kerala. The relevant clause of jurisdiction is reproduced as under:

"17. All legal proceedings in connection with or arising out the agreement shall be instituted and carried on in the Courts of Ernakulam only and Courts at Ernakulam shall have jurisdiction to decide the same."

Another agreement dated 9th February, 1997, also provides the similar clause, as below:

"All legal proceedings in connection with or arising out of the agreement shall be instituted and carried on in the Courts of Ernakulam only and Courts at Ernakulam shall have jurisdiction to decide the same."

10. Based on this, the petitioner (original accused) has filed Suit No. 157 of 1998 in the Court of Ernakulam at Kerala on 23rd March, 1998, and prayed for a decree of Rs. 45,47,862/- with 18% interest from the date of the Suit against the respondent/complainant. The said Suit was resisted by the Written Statement dated 16th October, 1999. The said Suit is still pending. In the Written Statement filed by the complainant, apart from resistance on merit, specific averments about fraud, false representations and breach of trust have been made. The averments made therein shows the grievance of the respondent/complainant against the petitioner (original accused) in regard to fraud, cheating, misrepresentation and criminal breach of trust.

11. The Complaint in question dated 28th July, 1999, further endorsed the said averments of fraud, cheating, misrepresentation and criminal breach of trust as contemplated under Section 420 of the Cr.P.C. and of Section 406, 409 IPC. It is clear from the record that the

Complaint is dated 28th July, 1999, whereas the Written Statement is of 16th October, 1999.

12. The clauses of those agreements, as referred and reproduced above, definitely gives rights to the parties to initiate appropriate civil proceedings before the agreed Forum. The commercial transactions and such agreed terms, including the term of the selecting or restricting the jurisdiction to settle particular disputes arising out of such agreements, are permissible and valid and the parties are bound by the same. In the present case, accordingly, petitioner (original accused) has already initiated a Civil Suit in Ernakulam Court at Kerala and the same is pending. The complainant has already filed the Written Statement and resisted the same. However, positive averments are being made by the respondent/complainant about fraud, cheating and criminal breach of trust.

13. The questions are (a) whether such clauses of the agreement are sufficient to take away the jurisdiction of the criminal Courts also. (b) Whether these agreements and specially such clauses itself, are sufficient to dismiss the Complaint, as filed by the complainant under Section 420 of Cr.P.C. read with Section 406, 409 of IPC.?

14. Chapter XIII of the Criminal Procedure Code deals

with the jurisdiction of the Criminal Court in enquiry and trials, starting from Section 177 to 185. The other relevant Sections of the Cr.P.C. are Section 218 to Section 223, which in a way, provide various exceptions to Section 177 of the Cr.P.C. The other exceptions are also available in Section 179 to 186 and 188 of the Cr.P.C. All these provisions provide the various facets in regard to the place of enquiry and trial and conflicts of territorial jurisdiction. It need not be mentioned that these provisions provide ordinary place of enquiry and trial which is subject to various exceptions as mentioned in Section 178 to 186, 188 and 218 to 223, apart from special provisions of the Special Acts.

15. The criminal complaints, based on various actions, involving various provisions of the Indian Penal Code (IPC), have different colour than ordinary civil suits or proceedings. The "cause of action" and "part of the cause of action" are the basic phrases. The related principles are being used to invoke the various jurisdictional aspects in Writ Petition under the Constitution of India or in civil matters. These principles may also be extended applicable to decide the place of enquiry or trial and/or territorial jurisdiction to entertain the criminal complaint or enquiry or trial if falls within ambit of exceptions. The Apex Court in **(2004) 8 S.C.C., 100** [Y.

Abraham Ajith & Ors. Vs. Inspector of Police, Chennai & Anr.] has dealt with the subject in the following paragraphs:

"8. Sections 177 to 186 deal with venue and place of trial. Section 17 reiterates the well-established common-law rule referred to in Halsbury's Laws of England (Vol.9, para 83) that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which, on the evidence, the facts occur and which are alleged to constitute the crime. There are several exceptions to this general rule and some of them re, so far as the present case is concerned, indicated in Section 178 of the Code which reads as follows:

'178. Place of inquiry or trial - (a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas,

it may be inquired into or tried by a court having jurisdiction over any of such local areas.'

13. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases.

14. It is settled law that cause of action consists of of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of

facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise." [emphasis added.]

16. In the present case, those relied and agreed clauses of jurisdiction , as referred above, no way affect or decide the jurisdiction of the Criminal Court or trial or enquiry in view of the specific provisions and Scheme of the Criminal Procedure Code. These provisions of the Criminal Procedure Code cannot be negated by any agreement or resolution by the parties. There cannot be any agreement or resolution to control or agree for specific jurisdiction before particular Court for trial or enquiry for offences or cases as contemplated under the IPC. Any action arising out of the provisions of the IPC or related Special Acts are governed by the provisions of the Criminal Procedure Code and related specific provisions. Such agreements or clauses and/or such negation of the provisions of Criminal Procedure Code is not permissible.

17. The restricted and/or agreed clauses of jurisdiction in any sort of agreements between the parties are definitely binding in respect of Civil disputes, arising out of the said transaction. However, such agreements or clauses cannot take away the jurisdiction of a Criminal Court, as available and/or as contemplated under

the Criminal Procedure Code and/or such other law.

18. The authorities cited by the respondent's counsel also supports his submission to maintain the impugned order of the learned Sessions Judge. What emerges from the authorities cited by the learned counsel appearing for the respondents are :

(a) Section 177, 178, 179 and Section 182, Cr.P.C., if read together, it provides that the Court at the place where deception is practiced and inducement is made to the person sent to deliver property will have jurisdiction to try the offence and the Courts mentioned in Section 182 will also be competent to try the said offence in addition to such a Court [(1982) Cr.L.J., 1482 Bhola Nath Vs. State, (2001) Cr.L.J., 732 - R. Mohandas & Anr. Vs. M. Jayarajan.] This includes the "act which has been done" and/or "such consequence has ensued".

(b) Section 181(4), Cr.P.C., provides place of a trial and, therefore, in cases of criminal breach of trust, the place where the accused is under liability to deliver the goods and as he failed to do the same, he has committed an offence of criminal breach of trust and, therefore, the Court has jurisdiction to try the offence. [(1978) Cr.L.J., 577 M/s. Mysore Manufacturers & Traders Vs. Ray

Choudhary; (1996) Cr.L.J., 732 Rajaram Patnaik Vs. Indian Metal & Ferro Alloys Ltd. In the present case, it is at Mumbai where the petitioner (original accused) failed to submit the accounts as agreed.

(c) Section 179 and Section 223(d) of the Cr.P.C. provides for territorial jurisdiction. The offences in question are of series of acts so connected together as to form the part of the same transaction, within the meaning of Section 223(d). The accused person can be tried at any of these places [(2001) Cr.L.J., 3417 Praveen Vs. State of Maharashtra].

(d) The Apex Court in (1984) Cr.L.J., 1153 State of Punjab Vs. Nohar Chand (supra) held that "the Court where the sub-standard fertilizer is marketed will equally have jurisdiction to try the manufacturer of the sub-standard fertilizer whose manufacturing activity is at a different place." This observation has a foundation of Section 179 and 180 of Cr.P.C.

(e) The Apex Court has already held, based on Sections 177, 189 and 239 of the Cr.P.C., 1898, that for an offence committed in pursuance of conspiracy, the Court having jurisdiction to try such offences can also try the offence of conspiracy even if committed outside its jurisdiction.

19. The authority cited by the learned Advocate for the petitioner in the case of Jai Parkash (supra) is distinguishable on facts itself. There was no cause of action which had arisen at Delhi in that case, except the fact that the respondent had his Head Office at Delhi. All the agreements and related invoices were sent and exchanged between the parties at its Branch Office at Bhadohi and the Civil Suit was accordingly filed and was pending at Bhadohi. The Court, therefore, held that the Complaint under Section 406 of IPC was not maintainable at New Delhi for want of jurisdiction and the proceedings of issuance of summons were quashed and set aside. In the present case, in view of the facts noted above, the advertisement and/or publicity of the film, itself was initiated and issued from Mumbai. The Main Office of the respondent/complainant is at Mumbai. The petitioner (original accused) was attracted by the said advertisement and accordingly, after due telephonic talks from Mumbai, visited the respondent/complainant at its Main Office at Mumbai for discussion and settled the terms regarding the distributorship of the film. The basic agreement to send the accounts weekly or monthly at the Mumbai Office, as referred above, cannot be overlooked. The allegations of fraud, cheating, misrepresentation and criminal breach of trust as made in the Complaint, as well as, raised in the

Written Statement by the complainant are also relevant. In the present case, therefore, it cannot be said that there was no cause of action or that no part of the cause of action arose in Mumbai. On the contrary, as observed by the learned Sessions Judge, the jurisdictional objection, as raised, may be relevant for the Civil proceedings in view of the Clauses in the agreement, but that itself cannot affect or takes away the jurisdiction of the Criminal Court like the Metropolitan Magistrate at Mumbai to issue summons and/or to proceed with the Complaint in accordance with law, especially when "part of cause of action" for the offences of cheating, fraud, criminal breach of trust, arose also at Mumbai.

20. It is difficult to accept the contention as raised by the petitioner (original accused) in the present proceedings without trial. The order passed by the Metropolitan Magistrate, therefore, was totally unwarranted and impermissible. The Apex Court has held in *Adalat Prasad Vs. Rooplal Jindal & Ors.* (J.T. 2004 (1) S.C. 243) that Magistrate has no power to review or reconsider the order of issuance of processs under Section 204 of Cr.P.C. Taking into account the provisions of law, specially revolving around Section 178 to 182 and 223 of the Cr.P.C. and the authorities cited by the learned Advocate for the respondents, read with the facts and

circumstances, as referred above, and the reasoning given by the learned Sessions Judge, I am also of the view that the Metropolitan Magistrate at Mumbai has jurisdiction to entertain and try the present complaint. The impugned decision is correct and need no interference.

21. The Petition is dismissed. The interim order stands vacated. The learned Magistrate to proceed with the Complaint in accordance with law expeditiously, in view of the fact that the complaint is pending since 1999.

22. In the result, the Writ Petition fails and is dismissed accordingly. No order as to costs.

[ANOO P V. MOHTA, J.]